

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RONALD STEVENS LIBERATORE,  
Plaintiff,  
v.  
STATE OF CALIFORNIA,  
Defendant.

Case No. [16-cv-3439-TEH](#)

ORDER OF DISMISSAL WITH LEAVE  
TO AMEND

Plaintiff, an inmate at San Quentin State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend and Plaintiff has submitted a letter (Docket No. 9) that the Court has construed as an amended complaint.

I

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pleadings filed by pro se litigants, however, must be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010);

1 Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir.  
2 1990).

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
4 allege two essential elements: (1) that a right secured by the  
5 Constitution or laws of the United States was violated, and (2)  
6 that the alleged violation was committed by a person acting under  
7 the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

8 II

9 Plaintiff presents various allegations regarding his time in  
10 prison including the confiscation of property and improper  
11 medical care.

12 Neither the alleged negligent nor intentional deprivation of  
13 property states a due process claim under § 1983 if the  
14 deprivation was random and unauthorized. Parratt v. Taylor, 451  
15 U.S. 527, 535-44 (1981) (state employee negligently lost  
16 prisoner's hobby kit), overruled in part on other grounds,  
17 Daniels v. Williams, 474 U.S. 327, 330-31 (1986); Hudson v.  
18 Palmer, 468 U.S. 517, 533 (1984) (intentional destruction of  
19 inmate's property). The availability of an adequate state post-  
20 deprivation remedy, e.g. a state tort action, precludes relief  
21 because it provides adequate procedural due process. King v.  
22 Massarweh, 782 F.2d 825, 826 (9th Cir. 1986). California law  
23 provides an adequate post-deprivation remedy for any property  
24 deprivations. Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir.  
25 1994) (citing Cal. Gov't Code §§ 810-895).

26 Deliberate indifference to serious medical needs violates  
27 the Eighth Amendment's proscription against cruel and unusual  
28 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin

1 v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other  
2 grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136  
3 (9th Cir. 1997) (en banc). A determination of "deliberate  
4 indifference" involves an examination of two elements: the  
5 seriousness of the prisoner's medical need and the nature of the  
6 defendant's response to that need. Id. at 1059.

7 A "serious" medical need exists if the failure to treat a  
8 prisoner's condition could result in further significant injury  
9 or the "unnecessary and wanton infliction of pain." Id. The  
10 existence of an injury that a reasonable doctor or patient would  
11 find important and worthy of comment or treatment; the presence  
12 of a medical condition that significantly affects an individual's  
13 daily activities; or the existence of chronic and substantial  
14 pain are examples of indications that a prisoner has a "serious"  
15 need for medical treatment. Id. at 1059-60.

16 A prison official is deliberately indifferent if he or she  
17 knows that a prisoner faces a substantial risk of serious harm  
18 and disregards that risk by failing to take reasonable steps to  
19 abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The  
20 prison official must not only "be aware of facts from which the  
21 inference could be drawn that a substantial risk of serious harm  
22 exists," but he "must also draw the inference." Id. If a prison  
23 official should have been aware of the risk, but was not, then  
24 the official has not violated the Eighth Amendment, no matter how  
25 severe the risk. Gibson v. County of Washoe, 290 F.3d 1175, 1188  
26 (9th Cir. 2002). "A difference of opinion between a prisoner-  
27 patient and prison medical authorities regarding treatment does  
28 not give rise to a § 1983 claim." Franklin v. Oregon, 662 F.2d

1 1337, 1344 (9th Cir. 1981).

2 The original complaint was dismissed with leave to amend  
3 because it was difficult to discern the exact nature of  
4 Plaintiff's allegations. The allegations of the amended  
5 complaint are similarly confusing.

6 Plaintiff states that a state official talks to him through  
7 his computer and stopped his television earphones from working.  
8 He also describes several medical problems, but the allegations  
9 are vague and many of them occurred from 1993 to 1997 which are  
10 time barred. The complaint will be dismissed and Plaintiff will  
11 be provided one final opportunity to present his claims, identify  
12 specific defendants and describe how they violated his  
13 constitutional rights. With regard to his medical claims he must  
14 describe how Defendants were deliberately indifferent to his  
15 serious medical needs.

16 III

17 For the foregoing reasons, the Court hereby orders as  
18 follows:

19 1. Plaintiff's Complaint is DISMISSED WITH LEAVE TO FILE A  
20 SECOND AMENDED COMPLAINT, within twenty-eight days containing all  
21 related claims against all Defendants that Plaintiff wishes to  
22 proceed against in this action. The pleading must be simple,  
23 concise and direct and must state clearly and succinctly how each  
24 and every Defendant is alleged to have violated Plaintiff's  
25 federally-protected rights. See Leer, 844 F.2d at 634. The  
26 pleading must include the caption and civil case number used in  
27 this order and the words COURT ORDERED SECOND AMENDED COMPLAINT  
28 on the first page. Plaintiff is advised that he must file all of

1 his claims in one complaint and not present them piecemeal to the  
2 Court in various letters and other documents. Failure to file a  
3 proper Second Amended Complaint within twenty-eight days of this  
4 order will result in the dismissal of this action.

5 2. Plaintiff is advised that the Second Amended Complaint  
6 will supersede the original Complaint and all other pleadings.  
7 Claims and defendants not included in the Second Amended  
8 Complaint will not be considered by the Court. See Lacey v.  
9 Maricopa County, 693 F.3d 896 (9th Cir. 2012) (en banc) ("For  
10 claims dismissed with prejudice and without leave to amend, we  
11 will not require that they be repled in a subsequent amended  
12 complaint to preserve them for appeal. But for any claims  
13 voluntarily dismissed, we will consider those claims to be waived  
14 if not repled.").

15 3. It is Plaintiff's responsibility to prosecute this  
16 action. Plaintiff must keep the Court informed of any change of  
17 address by filing a separate paper with the Clerk headed "Notice  
18 of Change of Address," and must comply with the Court's orders in  
19 a timely fashion. Failure to do so may result in the dismissal  
20 of this action for failure to prosecute pursuant to Federal Rule  
21 of Civil Procedure 41(b).

22 IT IS SO ORDERED.

23 Dated: 9/6/2016



THELTON E. HENDERSON  
United States District Judge

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